

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-2086SI

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United States of America,

Appellee,

v.

Albert A. Wheeldon,

Appellant.

\*  
\* On Appeal from the United  
\* States District Court  
\* for the Southern District  
\* of Iowa.

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\* [To Be Published]  
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Submitted: December 3, 2003

Filed: December 18, 2003

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Before LOKEN, Chief Judge, RICHARD S. ARNOLD and BOWMAN, Circuit  
Judges.

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PER CURIAM.

Albert A. Wheeldon appeals the sentence imposed by the District Court<sup>1</sup> following remand for resentencing. At resentencing, the District Court sentenced Wheeldon to one year and nine months (twenty-one months) imprisonment and three years supervised release. Counsel has moved to withdraw and filed a brief pursuant

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<sup>1</sup>The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

to Anders v. California, 386 U.S. 738 (1967), suggesting the District Court erred in not granting Wheeldon a downward departure.

We need not consider the departure issue, because Wheeldon did not raise it in his first appeal. See United States v. Kress, 58 F.3d 370, 373 (8th Cir.1995) (“Where a party could have raised an issue in a prior appeal but did not, a court later hearing the same case need not consider the matter.”). In any event, the District Court’s refusal to depart downward is unreviewable, because its statements at resentencing indicate it was aware of its authority to depart. See United States v. Orozco-Rodriguez, 220 F.3d 940, 942 (8th Cir. 2000).

We have reviewed the record for any nonfrivolous issues in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), and we have found none.

Accordingly, we grant counsel’s motion to withdraw, and we affirm.

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